

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

05 JUL 26 PM 3:56

JOHN D. FOGARTY,

Plaintiff,

CLERK-ALBUQUERQUE

JM

vs.

Case No. CIV 05-0026 WJ/LFG

GILBERT GALLEGOS, JOHN GONZALES,
DONALD KEITH, and MICHAEL FISHER, in their
individual capacities, and the CITY OF
ALBUQUERQUE,

Defendants.

**EXHIBITS "1" THROUGH "3" TO PLAINTIFF'S MOTION AND MEMORANDUM
TO COMPEL ANSWERS TO PLAINTIFF'S INTERROGATORIES AND
DOCUMENTS RESPONSIVE TO REQUEST FOR PRODUCTION OF
DOCUMENTS**

[Filed 07/25/05, Document No. 42]

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN D. FOGARTY,

Plaintiff,

vs.

CIV No. 05-26 WPJ/LFG

GILBERT GALLEGOS, JOHN GONZALES,
DONALD KEITH, and MICHAEL FISHER
in their individual capacities, and
the CITY OF ALBUQUERQUE.

RECEIVED
JUL 05 2005

Defendants.

DEFENDANT JOHN GONZALES' ANSWERS TO
PLAINTIFF JOHN FOGARTY'S FIRST SET OF INTERROGATORIES
DEFENDANT JOHN GONZALES

COMES NOW, Defendant John Gonzales, by and through counsel, Jerry A. Walz, Esq. and Martha Chicoski, Esq., Walz and Associates, hereby provides the following Answers to Plaintiff John D. Fogarty's First Set of Interrogatories:

INTERROGATORY NO. 1:

Please provide your complete biographical information.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404

(citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[c]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Based on these objections, Defendant Gonzales will not answer this interrogatory.

INTERROGATORY NO. 5:

If you have ever been a party to any lawsuit other than the instant case, including bankruptcy or divorce, please provide a complete description of all details pertaining to any such lawsuit and identify all documents which substantiate your answer.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

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Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales states he has been named in approximately 7-10 lawsuits during his employment with APD, the exact nature of each he does not recall, however, he has never had a judgment entered against him. Further, without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' personnel file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his personnel file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his personnel file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his personnel file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000

(physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

INTERROGATORY NO. 6:

Outline in complete detail the circumstances of each APD officer's involvement at the March 20, 2003 demonstration referred to in Plaintiff's Complaint, from the time he or she arrived until the time he or she left the scene, including but not limited to, times of arrival and departure, weapons worn, weapons used, ammunition used, and interaction any such officer had with any demonstrator.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [*Docket No. 14*]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales's right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

INTERROGATORY NO. 7:

Please describe in complete detail the circumstances of any and all contact [verbal or physical] any APD officer or City employee had with Plaintiff at the March 20, 2003 demonstration referred to in Plaintiff's Complaint, including but not limited to, the time, precise location, and purpose of the contact, the substance of all communication exchanged with Plaintiff and every other person who was present during any part of the contact.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

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Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales's Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiffs's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein,

660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waving Objections No. 1 and No. 2, Defendant Gonzales stands by his Supplemental Report for APD Case No. 03-55355 as his best recollection of contact, if any, that he or other officers in his presence may have had with Plaintiff at the March 20, 2003 demonstration.

INTERROGATORY NO. 8:

Describe with particularity the circumstances of each and every order you gave to any APD officer at or regarding the March 20, 2003 demonstration referred to in Plaintiff's Complaint, including but not limited to, every reason why you gave such order(s) and to whom you gave such order(s).

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for 'every fact' which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC, Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the 'principal or material' facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

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Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales's right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Defendant Gonzales stands by his Supplemental Report for APD Case No. 03-55355 as his best recollection of the orders, if any, that he may have given to any APD officer at or regarding the March 20, 2003 demonstration.

INTERROGATORY NO. 9:

Describe with particularity the circumstances of each and every order you followed in connection with the March 20, 2003 demonstration referred to in Plaintiff's Complaint, including but not limited to, the substance of each such order, by whom it was given and why it was given.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. *See, e.g., Hiskette v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for 'every fact' which supports identified allegations or defenses.") (citations omitted); *Hilt v. SFC Inc.*, 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." *Hiskette*, 180 F.R.D. at 404 (citing *Hilt*, 170 F.R.D. at 186, 188; *Lawrence v. First Kan. Bank & Trust*, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the 'principal or material' facts that support an allegation or defense." *Hiskette*, 180 F.R.D. at 405 (citing *Lawrence*, 169 F.R.D. at 664; *IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" *Hiskette*, 180 F.R.D. at 405 (quoting *IBP, Inc.*, 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales's right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient

privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Defendant Gonzales stands by his Supplemental Report for APD Case No. 03-55355 as his best recollection of the orders, if any, that he may have followed in connection with the March 20, 2003 demonstration.

INTERROGATORY NO. 10:

Describe the complete circumstances of each and every meeting you attended prior to the March 20, 2003 demonstration referred to in Plaintiff's Complaint, concerning such demonstration, including but not limited to, the complete identity [name, current address, telephone number, job title and role] of all individuals who were present at each such meeting, the complete substance of all discussion that took place during each such meeting, and what was said by whom.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily

when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [*Docket No. 14*]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor

information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Defendant Gonzales recalls attending some meetings prior to the March 20, 2003 demonstration with "usual" demonstrator contacts, although he does not recall the exact names of the participants. Upon information and belief, the current Tactical Commander for the Metro Division of APD may have these names from other demonstrations in the tactical section's files.

INTERROGATORY NO. 11:

Please describe the complete circumstances of any tactical plan, containment plan or any other plan that you followed concerning the March 20, 2003 demonstration, including but not limited to the identity of every individual who participated in the drafting and approval of such plan and the complete substance of any such plan.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for 'every fact' which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the 'principal or material' facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

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Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [*Docket No. 14*]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein,

660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Defendant Gonzales's actions were guided by his police training the APD Standard Operating Procedures. Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained. See Fed.R.Civ.P. 34(d). To prevent repetition, Defendant Gonzales refers to the attachments to Sergeant Keith's Answers to Plaintiff John D. Fogarty's First Set of Interrogatories to Defendant Donald Keith, Bates Nos. D000001 - D000063. Copies of these documents may be reviewed at defense counsel's office at a mutually agreed upon time.

INTERROGATORY NO. 12:

Please describe with particularity the circumstances of each and every complaint of any type any person has asserted against you, including but not limited to those filed with APD, the independent review office, internal affairs, filed as a lawsuit, or filed by an APD officer, during the time when you were an APD officer for assault, battery, unlawful and wrongful arrest, false arrest, excessive force and false imprisonment within the immediately preceding ten [10] years; including but not limited to, a description of all disciplinary measures which were taken as a result of each such complaint against you and identify of all documents concerning such complaints/discipline.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary. Rule 33 provides that:

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Hilt v. SEC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

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To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex

parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

INTERROGATORY NO. 14:

If you have ever been counseled, disciplined, involuntarily placed on leave, demoted, asked to resign, forced into early retirement or fired during the course of your employment with the City of Albuquerque, please describe in detail the circumstances of each such instance, including but not limited to, the date of the counseling, discipline, leave, demotion, request for resignation, retirement or termination, the person who counseled you or imposed the discipline, leave, demotion, resignation, retirement or termination, the factual basis for the counseling, discipline, leave, demotion, request for resignation, retirement or termination and the nature of the counseling, discipline or demotion, or the extent of the leave.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant

fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs and personnel files. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his internal affairs and personnel files, these files are protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his internal affairs and personnel files, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales

will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his internal affairs and personnel files subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce those portions of the requested files which are privileged.

INTERROGATORY NO. 15:

Please describe in complete detail the substance of any independent review office investigation, internal affairs investigation, or other type of investigation that was conducted regarding the March 26, 2003 demonstration referred to in Plaintiff's Complaint, including but not limited to the complete name, current address and telephone number of all persons conducting any such review/investigation and all persons who investigated or contributed information for any such reports or documents concerning such review/investigation.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They

should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.L.R-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein,

660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

INTERROGATORY NO. 16:

If during the course of any investigation conducted by you or other individuals regarding the incidents of the March 20, 2003 demonstration referred to in Plaintiff's Complaint, any discipline was recommended which you recommended or to which you consented or agreed, please state the nature of the discipline you agreed should be imposed, against whom and for what conduct or action.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party the duty to answer them by setting forth the material or principal facts." Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on them until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient

privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

INTERROGATORY NO. 18:

Please state in complete detail all authority and legal bases for your actions in connection with the demonstration referred to in Plaintiff's Complaint.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. *See, e.g., Hiskette v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); *Hilt v. SFC Inc.*, 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1). Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." *Hiskette*, 180 F.R.D. at 404 (citing *Hilt*, 170 F.R.D. at 186, 188; *Lawrence v. First Kan. Bank & Trust*, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." *Hiskette*, 180 F.R.D. at 405 (citing *Lawrence*, 169 F.R.D. at 664; *IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" *Hiskette*, 180 F.R.D. at 405 (quoting *IBP, Inc.*, 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Based on these objections, Defendant Gonzales will not answer this interrogatory.

INTERROGATORY NO. 19:

Please identify, refer to and cite verbatim any written or verbal order, policy, standard operating procedure, or regulation regarding the imposition of discipline for the alleged use of excessive force; assault; battery; false/wrongful arrest; and false imprisonment by APD employees.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for 'every fact' which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the 'principal or material' facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained. To prevent repetition, Defendant Gonzales refers to the attachments to Sergeant Keith's Answers to Plaintiff John D. Fogarty's First Set of Interrogatories to Defendant Donald Keith, Bates Nos. D000001 - D000063. Copies of these documents may be reviewed at defense counsel's office at a mutually agreed upon time.

INTERROGATORY NO. 20:

If you or your attorneys are aware of any statements, written or recorded, or other documents obtained from any person purporting to have knowledge of the incidents alleged in Plaintiff's Complaint, please describe each such statement with particularity, including, but not limited to, the name, current address and telephone number of each person who gave any such statement and to whom given; the dates of the statement; and the name, address and telephone number of the person or persons whom you know or believe have possession or custody of each statement at this time.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. *See, e.g., Hiskette v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); *Hilt v. SFC Inc.*, 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." *Hiskette*, 180 F.R.D. at 404 (citing *Hilt*, 170 F.R.D. at 186, 188; *Lawrence v. First Kan. Bank & Trust*, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." *Hiskette*, 180 F.R.D. at 405 (citing *Lawrence*, 169 F.R.D. at 664; *IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" *Hiskette*, 180 F.R.D. at 405 (quoting *IBP, Inc.*, 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

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Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein,

660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce, upon request, additional business records from which an answer to this interrogatory may be ascertained See Fed.R.Civ.P. 34(d). These records are the same as those listed in Defendant Gonzales's Answers to Plaintiff John D. Fogarty's First Set of Interrogatories to Defendant Donald Keith, Interrogatory 16:

No.	Description	Bates Stamp No.
1.	Supplemental Incident Report by Officer David Hubbard	D000001-D000003
2.	Supplemental Incident Report by Captain John Gonzales	D000004-D000021
3.	Supplemental Incident Report by Officer James Fox	D000022-D000024
4.	Supplemental Incident Report by Officer Daniel S. Magetteri	D000025-D000026
5.	Supplemental Incident Report by Officer James Montoya	D000027
6.	Supplemental Incident Report by Sergeant B. R. Carr	D000028-D000030
7.	Supplemental Incident Report by Lieutenant R. Hunstman	D000031-D000032
8.	Supplemental Incident Report by Officer Allen S. Hancock	D000033-D000034
9.	Supplemental Incident Report by Sergeant Shawn O'Connell	D000035-D000036
10.	Supplemental Incident Report by Officer ND Gonzales	D000037
11.	Supplemental Incident Report by Officer C. Lopez	D000038-D000039
12.	Supplemental Incident Report by Sergeant S. Hill	D000040-D000041
13.	Supplemental Incident Report by Officer E. Leveling	D000042-D000043
14.	Supplemental Incident Report by Officer D. Hammonds	D000044
15.	Supplemental Incident Report by Officer Ray DeFraies	D000045-D000047
16.	Supplemental Incident Report by Officer S. L. Grommes	D000048-D000049

17.	Evidence Tag-Sergeant R. Sandoval	D000050
18.	Supplemental Incident Report by Officer D. Oliver	D000051-D000052
19.	Supplemental Incident Report by Officer K. H. Burt	D000053
20.	Supplemental Incident Report by Officer L. Golson	D000054
21.	Supplemental Incident Report by Officer N. Hamby	D000055
22.	Supplemental Incident Report by Officer M. D. Loftis	D000056
23.	Supplemental Incident Report by Officer D. Hensley	D000057
24.	Supplemental Incident Report by Officer #2697	D000058
25.	Supplemental Incident Report by Sergeant Parker	D000059
26.	Supplemental Incident Report by Sergeant R. Sandoval	D000060-D000062
27.	Supplemental Incident Report by Officer Tom Armijo	D000063
28.	Supplemental Incident Report by Officer T. E. Armendariz	D000064
29.	Supplemental Incident Report by Officer K. D. Green	D000065
30.	Supplemental Incident Report by Officer L. Campbell	D000066
31.	Supplemental Incident Report by Officer J. D. Wood	D000067-D000068
32.	Supplemental Incident Report by Officer Dennis Lee Trujillo	D000069
33.	Supplemental Incident Report by Officer E. Brown	D000070
34.	Second Supplemental Incident Report by Officer E. Brown	D000071-D000073
35.	Supplemental Incident Report by Officer M. Thompson	D000074
36.	Supplemental Incident Report by Officer R. Carter	D000075
37.	Supplemental Incident Report by Sergeant Clarence Davis	D000076-D000077
38.	Supplemental Incident Report by Officer Michael Fisher	D000078-D000079
39.	Supplemental Incident Report by Officer James Perdue	D000080-D000081
40.	Supplemental Incident Report by Officer Pablo Padilla	D000082
41.	Supplemental Incident Report by Officer B. Lampiris-Tremba	D000083-D000084
42.	Supplemental Incident Report by Sergeant D. Keith	D000085

43.	Supplemental Incident Report by Captain M. M. Castro	D000086
44.	Supplemental Incident Reports by Sergeant D. A. Disrude	D000087-D000096
45.	Evidence Tags-Officer C. G. Davis	D000097-D000098
46.	Supplemental Incident Report by Officer F. Morales	D000099-D000100
47.	Supplemental Incident Report by Officer T. Evores	D000101-D000102
48.	Supplemental Incident Report by Sergeant D. A. Disrude	D000103-D000104
49.	Supplemental Incident Report by Detective G. Hicks	D000105-D000106
50.	Supplemental Incident Report by Officer F. Morales	D000107
51.	Pictures of people arrested	D000108-D000113
52.	APD SID Video	D000842
53.	Uncut Video Footage of "Street Heat"	D000843
54.	CD- Protest Pictures	D000844
55.	Dispatch Tape 3-20-03 7-16-03 CT 12 @ (1830)(2000) BY RSCP 29	D0000845
56.	Dispatch Tape 3-20-03 7-16-03 CT 16 @ (1830)(2000) BY RSCP 29	D000846
57.	Dispatch Tape 3-20-03 7-16-03 CT 28 @ (1830)(2000) BY RSCP 29	D000847
58.	Dispatch Tape 3-20-03 7-16-03 CT 33 @ (1830)(2000) BY RSCP 29	D000848
59.	Dispatch Tape 3-20-03 7-16-03 CT 20 @ (1830)(2000) BY RSCP 29	D000849

61.	Dispatch Tape 3-20-03 7-16-03 CT 15 @ (1830)(2000) BY RSCP 29	D000851
62.	Dispatch Tape 3-20-03 7-16-03 CT 32 @ (1830)(2000) BY RSCP 29	D000850
63.	Video Tape: War Protest KOB NBC-4 10 p.m. news 3/20/03 KOAT ABC-7 10 p.m. news 3/20/03 KRQE CBS-13 10 p.m. news 3/20/03	D000089
64.	Street Heat Video	D000090

INTERROGATORY NO. 21:

If you approved or authorized the use of tear gas, pepper spray and other weapons/chemical agents during the March 20, 2003 demonstration, please identify each and every APD policy, standard operating procedure and regulation applicable to the use of tear gas, pepper spray and other weapons/chemical agents that were used during such demonstration. If you did not authorize such use please provide the full name, department, badge number or other ID number and department or cell telephone number of all those individuals who did authorize such use.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. See, e.g., Hiskette v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); Hilt v. SFC Inc., 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." Hiskette, 180 F.R.D. at 404 (citing Hilt, 170 F.R.D. at 186, 188; Lawrence v. First Kan. Bank & Trust, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." Hiskette, 180 F.R.D. at 405 (citing Lawrence, 169 F.R.D. at 664; IBP, Inc. v. Mercantile Bank, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" Hiskette, 180 F.R.D. at 405 (quoting IBP, Inc., 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They

should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

Hill v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hill, 170 F.R.D. at 187-88.

Counting Plaintiff's interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Without waiving objections No. 1 and No. 2, Defendant Gonzales will produce business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Supplemental Report for APD Case No. 03-55355. See Fed.R.Civ.P. 34(d). Defendant Gonzales has already produced this document. Defendant Gonzales will also produce another set of business records from which an answer to this interrogatory may be ascertained: Defendant Gonzales' Internal Affairs file. See Fed.R.Civ.P. 34(d). However, Defendant Gonzales states that with regard to the disclosure of his Internal Affairs file, this file is protected by his federal constitutional right to privacy. Avoiding the disclosure of personal matters is a privacy interest which the United States Supreme Court recognizes. Whalen v. Roe, 429 U.S. 589, 598 (1977). Although it is unspecified in the federal constitution, the right to privacy is "within the penumbra of specific guarantees of the Bill of Rights," including the Tenth Amendment to the Constitution of the United States. Griswold v. Connecticut, 381 U.S. 479 (1965). More specifically, police officers have a recognized expectation of privacy as to personal matters. Denver Policemen's Protection Association v. Lichtenstein, 660 F.2d 432, 435 (10th Cir. 1981).

To produce his Internal Affairs file, Defendant Gonzales require reasonable assurances that the information contained in the file remains confidential. To accommodate Plaintiff's discovery request and maintain Defendant Gonzales' right to privacy, Defendant Gonzales will agree to an Unopposed Motion For Protective Order and Stipulated Protective Order. Defendant Gonzales will agree to the

production of his Internal Affairs file subject to a Protective Order providing for an *in camera*, ex parte review by Chief Magistrate Judge Garcia to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. See Lichtenstein, 660 F.2d at 435.

Additionally, Defendant Gonzales objects to the disclosure of any document which is protected by the attorney-client, attorney work product, physician-patient, and psychotherapist-patient privileges. See Rule 11-503 NMRA 2000 (lawyer-client privilege); Rule 11-503 NMRA 2000 (physician-patient and psychotherapist-patient privilege); Jaffee v. Redmond, 518 U.S. 1, 9-10 (1996). In Lankford v. City of Hobart, 27 F.3d 477 (10th Cir. 1994), the Tenth Circuit stated that there is a clearly established privacy right in private medical records. See also, Flanagan v. Munger, 890 F.2d 1557 (10th Cir. 1989). Accordingly, Defendant Gonzales will not produce or redact those portions of the requested file which are privileged.

Without waiving objections No. 1 and No. 2, Captain Gonzales gave orders to various supervisor officers to use CS gas to disperse protestors who refused to clear Central Avenue after repeated lawful orders to do so.

Defendant Gonzales, upon request, will produce business records from which an answer to this interrogatory may be ascertained. See Fed.R.Civ.P. 34(d). To prevent repetition, Defendant Gonzales refers to the attachments to Sergeant Keith's Answers to Plaintiff John D. Fogarty's First Set of Interrogatories to Defendant Donald Keith, Bates Nos. D000001 - D000063. Copies of these documents may be reviewed at defense counsel's office at a mutually agreed upon time.

INTERROGATORY NO. 22:

For each affirmative defense you asserted in your answer or intend to assert in this action, please provide all factual and legal bases which support each of your defenses.

ANSWER:

Objection No. 1. This interrogatory is overly broad and unduly burdensome. Interrogatories which seek "each and every fact" and which blanket an entire case or claim are objectionable. *See, e.g., Hiskette v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404-05 (D.Kan. 1998) ("[i]nterrogatories should not require the answering party to provide a narrative account of its case. * * * The court will generally find them overly broad and unduly burdensome on their face to the extent they ask for "every fact" which supports identified allegations or defenses.") (citations omitted); *Hilt v. SFC Inc.*, 170 F.R.D. 182, 186 (D.Kan. 1997) ("[r]ecent authority counsels discretion and a tempered use of interrogatories seeking all supporting facts and those which duplicate the initial disclosures required by Rule 26(a)(1): Each interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only.") (citation omitted). Moreover, "[i]nterrogatories should not require the answering party to provide a narrative account of its case." *Hiskette*, 180 F.R.D. at 404 (citing *Hilt*, 170 F.R.D. at 186, 188; *Lawrence v. First Kan. Bank & Trust*, 169 F.R.D. 657, 662 (D.Kan. 1996)). "Interrogatories may, however, properly ask for the "principal or material" facts that support an allegation or defense." *Hiskette*, 180 F.R.D. at 405 (citing *Lawrence*, 169 F.R.D. at 664; *IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 320 (D.Kan. 1998)). "Interrogatories which do not encompass every allegation, or a significant number of allegations, of the Complaint, reasonably places upon the answering party 'the duty to answer them by setting forth the material or principal facts.'" *Hiskette*, 180 F.R.D. at 405 (quoting *IBP, Inc.*, 179 F.R.D. at 321-22).

Objection No. 2. The interrogatories served on Defendant Gonzales are unduly burdensome because the combined number of interrogatories and their subparts exceeds the number of interrogatories allowed by Federal Rule of Civil Procedure 33. The Federal Rules of Civil Procedure which govern discovery provide no absolute, unlimited right to find out every conceivable, relevant fact that opposing litigants know. To the contrary, Rule 33 provides that:

[e]ach interrogatory should consist of a brief, simple, direct, and unambiguous question, dealing with one point only. The question should be objective and nonargumentative. They should not seek narrative answers or attempt to argue, cross-examine, or impeach. They should be written so that the question and the expected answer can be understood easily when read at trial. . . . Whenever a decision is made to propound interrogatories, counsel should have clearly in mind what information he seeks and what he intends to do with it. Interrogatories should be targeted at discrete issues, rather than blanketing the case, and should be few in number.

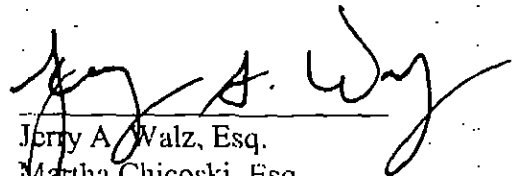
Hilt v. SFC Inc., 170 F.R.D. 182, 188 (D.Kan. 1997).

Rule 33(a) only allows a party to serve 25 interrogatories, including all discrete subparts. See Fed.R.Civ.P. 33(c). The limitation on the number of interrogatories which a party may serve is further limited by Local Rule 26.5(b). D.N.M.LR-Civ. 26.5(b). Moreover, the Attorney's Provisional Discovery Plan in this matter authorizes Plaintiff to serve a Defendant Gonzales with only 25 interrogatories. See Attorney's Provisional Discovery Plan, p. 2 [Docket No. 14]. "Even where fewer than twenty-five interrogatories are served, or the parties have agreed pursuant Rule 29 to allow a greater number, judges may look askance at sets of interrogatories that appear to be unduly burdensome, and may demand a justification for the interrogatories before ordering responses." Hilt, 170 F.R.D. at 187-88.

Counting Plaintiffs' interrogatories and their subparts, Plaintiff far exceeded the number of interrogatories which the Rules and the Court allowed him to ask. Therefore, Defendant Gonzales is not required to answer the interrogatories Plaintiff served on him until Plaintiff has complied with Rule 33.

Based on these objections, Defendant Gonzales will not answer this interrogatory.

Respectfully submitted,



Jerry A. Walz, Esq.
Martha Chicoski, Esq.
Attorneys for Defendant Gonzales
Walz and Associates
12009 N. Highway 14
Cedar Crest, NM 87008
505-281-3414

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN D. FOGARTY

Plaintiff,

vs.

No. CV-05-0026 WJ/LFG

GILBERT GALLEGOS, JOHN GONZALES,
DONALD KEITH, and MICHAEL FISHER
in their individual capacities, and the CITY OF
ALBUQUERQUE,

RECEIVED
MAY 26 2005

Defendants.

**DEFENDANT JOHN GONZALES' RESPONSE TO PLAINTIFF JOHN D.
FOGARTY'S FIRST REQUESTS FOR PRODUCTION**

COMES NOW, Defendant John Gonzales, by and through counsel, Jerry A. Walz and Martha Chicowski, Walz and Associates, hereby provides the following Response to Plaintiff John D. Fogarty's First Requests for Production.

REQUEST FOR PRODUCTION NO. 1:

All documents to which you referred, described, or which you consulted in formulating your answers to Plaintiff's First Set of Interrogatories. For any such documents you claim are protected by the attorney/client privilege or are protected work product, please produce a privilege log.

RESPONSE:

Defendant Gonzales has yet to be served with an amended Set of Interrogatories, per the agreement of counsel, which occurred during the telephonic conference with Judge Garcia on April 29, 2005.

REQUEST FOR PRODUCTION NO. 2:

Please produce any and all documents in your possession regarding your employment during the past ten [10] years, including but not limited to all documents which have been purged from any APD files.

RESPONSE:

Defendant Gonzales, through counsel, is in the process of obtaining his employment records for this request. A request for the documents has been made through the appropriate channels. After the records are obtained, they will be produced, or appropriate objections will be made.

REQUEST FOR PRODUCTION NO. 3:

Please produce copies of all complaints, whether filed with the APD independent review office, internal affairs, in a civil action, in any personnel action, or by any City of Albuquerque employee, against you during your employment with the City of Albuquerque Police Department [APD], including but not limited to all documents which have been purged from any APD files.

RESPONSE:

Defendant Gonzales, through counsel, is in the process of obtaining these records to respond to this request. A request has been made through the appropriate channels. After the records are obtained, they will be produced, or appropriate objections will be made. Further, any such files located will only be produced pursuant to a Confidentiality Order following an *in camera* review by the Court.

REQUEST FOR PRODUCTION NO. 4:

Please produce copies of all documents that you intend to use, or may use as exhibits in this lawsuit, including but not limited to documents that you may use as exhibits in motions practice, at deposition, at trial or for impeachment purposes.

RESPONSE:

No decisions have yet been made as to documents or other materials that may be used as exhibits in this lawsuit.

REQUEST FOR PRODUCTION NO. 5:

Please produce a copy or make available for inspection and copying all audio tapes, belt tapes, photographs or video tapes regarding any aspect of the demonstration referred to in Plaintiff's Complaint.

RESPONSE:

Defendant Gonzales is no longer employed by APD, and is not in possession, custody, control, or legal authority over these materials. Upon information and belief, these materials would be in the custody and control of the City of Albuquerque.

REQUEST FOR PRODUCTION NO. 6:

Please produce an un-redacted copy of each and every document relating to any investigation and findings made against you by any entity or any individual for any type of misconduct, and copies of all documents relating to any disciplinary action that was taken or implemented against you within the immediately preceding 10 [ten] years, including but not limited to any documents which have been purged from APD files.

RESPONSE:

Defendant Gonzales through counsel is in the process of obtaining his employment records for this request. After the records are obtained, they will be produced, or appropriate objections will be made. Further, any such files located will only be produced pursuant to a Confidentiality Order following an in camera review by the Court.

REQUEST FOR PRODUCTION NO. 7:

Please produce an un-redacted copy of all reports you drafted or generated that pertain to the demonstration referred to in Plaintiff's Complaint.

RESPONSE:

Produced. See Bates No. Def. John Gonzales 0001-00018.

REQUEST FOR PRODUCTION NO. 8:

Please produce copies of all confidential, internal or "intelligence" documents compiled concerning you, compiled by you or on your behalf during your employment with APD, including but not limited to all documents that have been purged from any APD file.

RESPONSE:

Defendant Gonzales is no longer employed by APD, and is not in possession, custody, control, or legal authority over these materials. Upon information and belief, these materials, if they exist, would be in the custody and control of the City of Albuquerque.

REQUEST FOR PRODUCTION NO. 9:

Please produce any and all certificates, materials, work books, text books, and any other documents you have ever received or provided in the course of or as a result of education or training of City of Albuquerque Police Department employees regarding excessive force, false arrest, false imprisonment, assault, battery, use of tear gas and use of pepper spray.

RESPONSE:

Defendant Gonzales is no longer employed by APD, and is not in possession, custody, control, or legal authority over these materials. Upon information and belief, these materials, if they exist, would be in the custody and control of the City of Albuquerque, most likely in the Albuquerque Police Department S.W.A.T. office.

REQUEST FOR PRODUCTION NO. 10:

Please produce copies of each and every document evidencing sworn testimony given by you in the last fifteen [15] years, including but not limited to deposition transcripts, trial transcripts, affidavits, and answers to interrogatories.

RESPONSE:

Defendant Gonzales appeared in approximately 500-600 trials during his employment with APD. This includes traffic court, metro court, district court, DWI hearings and federal court proceedings. Defendant Gonzales does not have copies of transcripts, affidavits, or answers to interrogatories from any of these proceedings.

REQUEST FOR PRODUCTION NO. 11:

Please produce a copy of all written communications and statements which you either received from or provided to any entity or individual which concern or mention Plaintiff other than those you produced in response to any requests set forth above. For any such documents you claim are protected by the attorney/client privilege or are protected work product, please produce a privilege log.

RESPONSE:

Defendant John Gonzales has no knowledge of any such communications or statements.

REQUEST FOR PRODUCTION NO. 12:

Please produce a copy of each and every document that supports, or upon which you intend to rely for your defense of the case, including, but not limited to each affirmative defense in your answer.

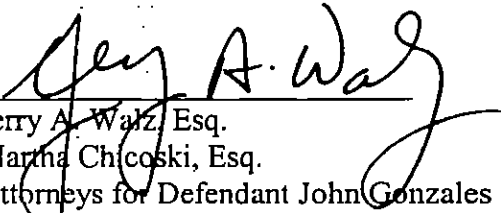
RESPONSE:

Defendant John Gonzales objects to this Request for the reason that this case is still in the early stages of discovery and has not decided, through counsel, as to the

identification of such material. Affirmative defenses are required to be pleaded, or they are generally waived. As documents are obtained in discovery from Plaintiff and co-Defendants, any such documents that may apply to the affirmative defenses pleaded by Defendant Gonzalez will be identified and produced. A copy of Defendant Gonzales' Bates Numbered attachment 0001 through 0018 are applicable to Defendant Gonzales' affirmative defenses of qualified immunity, and the reasonableness of his actions. Generally, see Gonzales' Affirmative Defenses one, two, three, four, seven, and eight. However, it is anticipated that future deposition testimony by Plaintiff and Plaintiff's witnesses also will be utilized by Defendant Gonzales in support of his affirmative defenses.

Respectfully Submitted,

WALZ AND ASSOCIATES



Jerry A. Walz, Esq.
Martha Chicoski, Esq.
Attorneys for Defendant John Gonzales
12009 N. Highway 14
Cedar Crest, NM 87008
(505) 281-3414
(505) 286-8171 (fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN D. FOGARTY

Plaintiff,

vs.

No. CV-05-0026 WJ/LFG

GILBERT GALLEGOS, JOHN GONZALES,
DONALD KEITH, and MICHAEL FISHER
in their individual capacities, and the CITY OF
ALBUQUERQUE,

Defendants.

STIPULATED PROTECTIVE ORDER REGARDING
DEFENDANT JOHN GONZALES' INTERNAL AFFAIRS AND PERSONNEL
FILES

THIS MATTER came before this Court on Defendant John Gonzales' Unopposed Motion for Protective Order Regarding Defendant Gonzales' Internal Affairs and Personnel Files. This Court reviewed the Motion and the arguments made therein and considered that all the parties to this litigation do not oppose this Motion. Accordingly, this Court finds that Defendant Officer's Unopposed Motion for Protective Order Regarding Defendant Gonzales' Internal Affairs and Personnel Files is well-taken and should be granted.

IT IS THEREFOER ORDERED, AJUDGED AND DECREED that:

- A. Defendant Gonzales' Unopposed Motion for Protective Order Regarding Defendant Gonzales' Internal Affairs and Personnel Files is hereby granted;
- B. Defendant Gonzales shall produce to Chief United States Magistrate Judge Lorenzo F. Garcia a copy of those portions of his internal affairs and personnel files

which Defendant Gonzales contends are privileged from disclosure. This Court will then conduct an *in camera* inspection to ensure that neither privileged matters nor information which is entitled to a reasonable expectation of privacy is disclosed. Defendant Gonzales shall produce these limited portions of their Internal Affairs and personnel files within ten (10) days from the date on which this Court enters this Stipulated Protective Order;

C. Defendant Gonzales shall file with the Court a brief and a *Vaughn* index which sets forth the factual and legal basis for their objections to the production of their Internal Affairs and personnel files. Defendant Gonzales shall file his brief and *Vaughn* index on the date that his Internal Affairs and personnel files are produced to the Court and shall serve a copy of the brief and *Vaughn* index on Plaintiff's counsel;

D. Plaintiff shall have fourteen (14) days from the date on which Defendant Gonzales serves Plaintiff's with Defendant Gonzales' brief and *Vaughn* index to file objections to Defendant Gonzales' claims of privilege;

E. Defendant Gonzales shall produce to Plaintiff's counsel a copy of those portions of his Internal Affairs and personnel files which Defendant Gonzales does *not* contend are privileged from disclosure within ten (10) days of this Court's entry of this Stipulated Protective Order;

F. Plaintiff and Plaintiff's counsel shall hold Defendant Gonzales' Internal Affairs and personnel files in the strictest of confidence, store the files securely, and use the files solely for the purposes of this litigation;

G. Plaintiff and Plaintiff's counsel shall not disclose or produce Defendant Gonzales' Internal Affairs and personnel files to any non-party at any time except for police procedures experts retained by Plaintiff in this matter and for use as exhibits at

trial;

H. Plaintiff and Plaintiff's attorneys shall limit access to Defendant Gonzales' Internal Affairs files to those qualified persons (attorneys, associates, staff/employees who are working on the litigation, and Plaintiff's police procedures experts) who are authorized to receive the files under a Protective Order;

I. Plaintiff and Plaintiff's shall return to Defendant Gonzales his Internal Affairs and personnel files produced under this Protective Order within thirty (30) days of the resolution of this case;

J. Plaintiff and Plaintiff's attorneys shall purge all copies of Defendant Gonzales' Internal Affairs and personnel files from Plaintiff and Plaintiff's attorney's files at the resolution of the lawsuit.

The Honorable Lorenzo F. Garcia
Chief United States Magistrate Judge

SUBMITTED BY:

WALZ AND ASSOCIATES

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Respectfully submitted,

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Certification of mailing:

I hereby certify that a true and correct copy of the foregoing pleading was sent via U.S. mail on this ____ day of July, 2005 to the following counsel of record:

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